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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,974	07/17/2003	Robert V. Gruber	RPC 0529 PUSA	2596
7590	05/24/2004		EXAMINER	
Konstantine J. Diamond 4010 E. 26th Street Los Angeles, CA 90023			SHRIVER II, JAMES A	
			ART UNIT	PAPER NUMBER
			3618	

DATE MAILED: 05/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/621,974	GRUBER, ROBERT V.
	Examiner J. Allen Shriver	Art Unit 3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 28 October 2003.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-30 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 17-24 is/are allowed.
 6) Claim(s) 1-12 and 25-30 is/are rejected.
 7) Claim(s) 13-16 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 28 October 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date 10/28/2003.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 16 is objected to because of the following informalities: Claim 16 is dependent upon claim 17. New claims should have the dependent claims dependent upon preceding claims. It would seem that claim 16 should be dependent from claim 15, however, for examination purposes, Examiner will examine claim 16 as though it is depended from independent claim 17. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 8-12 and 26 are rejected under 35 U.S.C. 102(a) as being anticipated by Loftus (GB 2,353,012 A).** Loftus discloses a tray and dolly assembly comprising a dolly (10) having a floor with upper and lower surfaces, and a pair of opposed side walls (18,20) wherein each side wall has a locking portion (26); and a tray (50) having a floor with upper and lower surfaces, the tray having a pair of opposed side walls wherein each side wall has a bottom locking portion (52) , wherein each tray side wall has a top locking portion (58), and wherein each tray side wall top locking portion is configured to abut and mate with a corresponding tray side wall bottom locking portion of a next tray to allow a stack of trays to be placed on the dolly

with adjacent trays interlocked with each other (See Fig. 6), and wherein each dolly side wall locking portion is configured to abut and mate with a corresponding tray side wall bottom locking portion of the tray to interlock the dolly with the tray (See Figs. 3A and 3B); **[claim 9]** a plurality of casters (14) supporting the dolly floor; **[claim 10]** wherein the dolly floor is rectangular in shape and has four corners, and wherein the plurality of casters is four casters with a caster located proximate each corner of the dolly floor (See Fig. 4A); **[claim 11]** wherein each dolly side wall locking portion has a plurality of inwardly extending locking portions (See Fig. 4B); **[claim 12]** wherein each tray side wall top locking portion includes a plurality of inwardly extending locking portions that are shaped substantially the same as the dolly side wall locking portion inwardly extending locking portions (See Fig. 4B).

Regarding claim 26, Loftus discloses a dolly assembly (10) for receiving a tray (50) having a tray floor, the dolly assembly comprising a dolly (10) having a floor (24,34) with upper and lower surfaces, the dolly having a pair of opposed side walls (18,20) wherein each side wall has an inwardly extending locking portion (26), wherein each dolly side wall locking portion is configured to abut and mate with a corresponding tray side wall bottom locking portion on the tray to interlock the dolly with the tray; and a plurality of protruding members (22) extending upwardly from the upper surface, wherein the plurality of protruding members is adapted to extend into a plurality of openings (52) in the tray floor when the tray floor is received on the dolly floor to further interlock the tray with the dolly.

4. Claims 28-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Upshaw et al. (US Patent 4,298,127). Upshaw discloses a tray and dolly assembly comprising a dolly (102) having a floor with upper and lower surfaces and a plurality of protruding members

(206,208) extending upwardly from the upper surface, the dolly including a pair of opposed peripheral sides in a plane different from a plane of the upper surface; and a tray (E) having a floor with upper and lower surfaces and with a plurality of openings (See Fig. 1), the tray having a pair of opposed side walls wherein when the tray floor is received on the upper surface of the dolly floor, the plurality of protruding members extends into the plurality of openings to interlock the tray with the dolly (See Fig. 1); [claim 29] wherein the tray is supported at least partially by the pair of opposed peripheral sides and wherein the tray is supported at least partially by the dolly upper surface; wherein the dolly includes a plurality of casters (204) supporting the dolly floor.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 1-5, 7 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Upshaw et al. (US Patent 4,298,127).** Upshaw discloses a tray and dolly assembly (See Fig. 1) comprising a dolly (102) having a floor with upper and lower surfaces (See Fig. 13) and with a plurality of protruding members (206,208) extending upwardly from the upper surface; and a tray (E) having a floor with upper and lower surfaces and with a plurality of openings (See Fig. 1), the tray having a pair of opposed side walls (106,108) wherein when the tray floor is received on the dolly floor, the plurality of protruding members extends into the plurality of openings to

interlock the tray with the dolly (See Fig. 1); **[claim 2]** a plurality of casters (204) supporting the dolly floor; **[claim 3]** wherein the dolly floor is rectangular in shape and has four corners, and wherein the plurality of casters is four casters with a caster located proximate each corner of the dolly floor; **[claim 4]** wherein the plurality of openings in the tray floor extend through the tray floor; **[claim 5]** wherein the tray floor comprises a lattice structure defining the plurality of openings (See Fig. 2).

Upshaw et al. does not specifically disclose wherein the plurality of protruding members extends into the plurality of openings but does not extend beyond the tray floor upper surface. The protruding members of Upshaw extends along the side walls of the tray beyond the tray floor upper surface, so as to not interfere with the placement of objects within the tray. It would have been an obvious matter of design choice to shorten the length of the protruding members to not extend beyond the upper surface of the tray floor, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). The motivation for doing so would have been to not interfere with objects being placed in the tray, when the protruding members are positioned in the center region of the tray.

Regarding claims 7 and 25, Upshaw discloses a tray and dolly assembly (See Fig. 1) comprising a dolly (102) having a floor with upper and lower surfaces (See Fig. 13), the dolly floor defined by an outer peripheral edge and with a plurality of protruding members (206,208) extending upwardly from the upper surface; and a tray (E) having a floor with upper and lower surfaces and with a plurality of openings (See Fig. 1), the tray having a pair of opposed side walls (106,108) wherein when the tray floor is received on the dolly floor, the plurality of

protruding members extends into the plurality of openings to interlock the tray with the dolly (See Fig. 1), wherein the dolly floor is rectangular in shape and defines a central opening (See Fig. 12).

Upshaw does not specifically disclose wherein the protruding members are spaced at varied distances from the central opening and/or the outer peripheral edge. It would have been obvious to one having ordinary skill in the art at the time the invention was made to arrange the protruding members disclosed in Upshaw at varied distances from the central opening, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70. The motivation for varying the distances of the protruding members from the central opening would be to accommodate trays of various sizes and configurations.

7. Claims 27 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Upshaw et al. (US Patent 4,298,127) in view of Cino et al. (US Patent 6,105,980). Upshaw et al. disclose a tray and dolly assembly as set forth above, but does not disclose the dolly floor including a plurality of caster pockets for receiving casters of a stacked like dolly. Cino et al. discloses a plurality of caster pockets (See Figs. 7A and 7B) for receiving casters of a stacked like dolly. At the time of the invention, it would have been obvious to a person of ordinary skill in this art to provide cater pockets on the dolly disclosed in Upshaw et al. in view of the teaching of Cino et al. The motivation for doing so would have been to allow the dolly to be securely stacked upon one another for storage when not in use.

Regarding claim 30, the caster pockets provided on Upshaw in view of the teaching of Cino et al. would be positioned between the pair of opposed peripheral sides of the dolly.

Double Patenting

8. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

9. **Claim 6 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of prior U.S. Patent No. 6,607,199 B2.** This is a double patenting rejection.

Allowable Subject Matter

10. Claims 13-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The following is a statement of reasons for the indication of allowable subject matter: The prior art did not disclose wherein the dolly side wall locking portion has a middle trapezoidal inwardly extending locking portion and wherein the tray side wall bottom locking portion has a middle trapezoidal recess and a pair of outside recesses.

11. Claims 17-24 are allowed over the prior art. The following is a statement of reasons for the indication of allowable subject matter: Regarding claim 17, the prior art did not specifically teach the tray having a pair of opposed side walls wherein each side wall has a bottom locking portion and a top locking portion in combination with a dolly having a floor with upper and

lower surfaces and a plurality of protruding members extending upwardly from the upper surface, and a pair of opposed side walls wherein each side wall has a locking portion.

Conclusion

12. The prior art made of record in the accompanying PTO Form 892 and not relied upon is considered pertinent to applicant's disclosure. Liu (US Patent 5,695,205) and Sorensen et al. (US Patent 5,142,445) are relied on to show a stackable shelving system. Stahl (US Patent 5,344,022), Rudd (US Patent 3,282,458), Cheeseman (US Patent 6,394,274 B1) and Koefelda (US Patent 6,260,706 B1) are relied on to show a stackable tray. Lauto (US Patent 5,427,394) is relied on to show a modular shopping cart. Liu (US Patent 6,257, 152 B1) is relied on to show stackable pallets (dollies).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Allen Shriver whose telephone number is (703) 308-1224. The examiner can normally be reached on Mon-Thurs 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Johnson can be reached on (703) 308-0885. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3618

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


J. Allen Shriver 5/15/04
Examiner
Art Unit 3618

JAS